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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

DATE: AUG 0 8 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral fellow at the Van Andel Research Institute (VARI), Grand Rapids, Michigan. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree (although the AAO will revisit this issue). The director based the denial solely on a finding that the petitioner has not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 23, 2011. In an accompanying statement, counsel stated:

> [The petitioner] is a Cancer Research Scientist and is studying the causes and effective treatments for kidney cancer. More specifically, [the petitioner] is studying antioxidant therapy for kidney cancer and the mechanisms that give rise to sensitivity to the antioxidant therapies. [The petitioner's] studies focus on the development of a new family of anti-cancer drugs and developing the animal models for their testing.

The petitioner submitted background information about his employer and his research specialty, along with copies of his published work and four witness letters. [redacted], who has "known [the petitioner] since 1989" and "attended the same high school" as the petitioner, is now an assistant professor at the University of Colorado, Denver. [redacted] stated:

> As a scientist working in the fields of system and computational biology, I am aware of the lack of talented individuals who possess both life science and computer science skills. [The petitioner] is one of the few scientists that I know who is well-versed in both these areas. His vast knowledge in these two important fields has enabled him to develop powerful algorithms which apply across disciplinary scientific facts [*sic*]. One such example is in his current work on papillary renal cell carcinoma. He developed a new algorithm that can predict transcription factors that control a gene of interest. This new algorithm has enabled him to discover deregulation of biochemical pathways that better describe the clinical, genetic, and morphological phenotypes that is [*sic*] apparent in the aggressive type 2 papillary renal cell carcinoma. This discovery has also explained why treatment strategy based on the current paradigm on the particular subtype of kidney cancer is failing to show any promising response. This new discovery can potentially lead to the development of new treatment strategies for this aggressive subtype of kidney cancer. [The petitioner] is also working on an algorithm that will enable the prediction of changes in the gene expression profiles upon switching a gene on or off. This algorithm will have a tremendous impact both in the understanding of cancer biology as well as finding new strategies to cure cancer.

VARI Professor Bin Tean Teh stated:

> I . . . set up the NCCS-VARI Translational Research Laboratory at the National Cancer Centre of Singapore in 2007. . . .
>
> Prior to joining my lab, [the petitioner] had a distinguished career. . . . I was fortunate to have met [the petitioner] in August 2007, and persuaded him to become the first research fellow in the NCCS-VARI Translational Research Laboratory in November 2007. [The petitioner] played a key role in setting up this laboratory which combined resources in both Singapore and the United States to work towards the same goal of improving human health. . . . [The petitioner] is currently conducting several of the most important projects in my laboratory, which will establish our leading position in translational research for kidney cancer. . . .
>
> [The petitioner] is one of the few scientists that I know who works well with both clinicians and scientists. This is evident in the findings [that] resulted from the work [the petitioner] completed through collaborating with one of the surgeons, [redacted], and research fellow, [redacted] where together they managed to identify a biological marker that can be used to differentiate the deadly bile duct cancer from the more common liver cancer. This biological marker facilitated a more aggressive treatment regime to be administered to patients with bile duct cancer. . . .
>
> . . . .Through his knowledge in biochemistry and understanding of computer programming, he has been able to formulate revolutionary hypotheses . . . as well as plan[] and execut[e] the necessary laboratory experiments to test these hypotheses.

. . . [The petitioner] works with the University of Cambridge in understanding a protein known as hypoxia inducible factor which has enabled us to look into differential controls exerted by this protein in kidney cancer cells and in normal kidney cells. He utilizes the latest sequencing technology, which allows him to look at the protein's interaction with DNA both in tumor and in normal cells.

[redacted], assistant professor at VARI, stated:

[The petitioner] used a computer modeling approach to predict that a very aggressive form of kidney cancer was associated with a defect in the way the tumor cells were responding to cellular stress. [The petitioner] then proceeded to perform laboratory studies to prove his computational model was correct. He is now in the process of applying this new knowledge to identify potential treatments for this aggressive disease.

[redacted] of Weill Cornell Medical College and [redacted], stated: "I am not personally acquainted with [the petitioner]; however, I am well aware of his major contributions in the field of molecular genetics in kidney cancer." The *curricula vitae* of Prof. Teh and Prof [redacted] show past collaborations between the two researchers.

Prof. [redacted] described the petitioner's past career and concluded that the petitioner's work "lays down the foundation for the development of targeted treatment strategies for [a] subtype of kidney cancer" known as type 2 papillary renal cell carcinoma. Prof. [redacted] asserted that the petitioner "is surely one of the most accomplished researchers in his field." The record does not show that this opinion extends beyond those who have collaborated with the petitioner or his mentors.

The director issued a request for evidence on September 1, 2011, instructing the petitioner to establish the impact of his work. The director specifically requested evidence of independent citation of the petitioner's published work.

In response to the request, counsel asserted that the petitioner's "research has been cited numerous times by other cancer researchers in their published articles." The petitioner submitted copies of seven citing articles and evidence of citation in a book. One of the articles (exhibit 2 in the petitioner's filing) cited the article only as one of several named sources for cell cultures.

The petitioner submitted a copy of the manuscript of a not-yet-published new article, accepted for publication in *Cancer Cell*. This evidence shows the petitioner's continued activity, but the article is not evidence of its own significance. Counsel claimed: "*Cancer Cell* is the most influential publication for original cancer research publications. Having an article selected for publication in this journal is the equivalent of being nominated for an Academy Award." Counsel offered no support for this claim, or for similar claims about the significance of a poster presentation that the petitioner made at a 2011 conference, and an invitation for the petitioner to review a manuscript submitted for publication in *Cellular Oncology*.

The AAO notes that counsel bases the claim about the influence of *Cancer Cell* on the journal's impact factor. Impact factor is a function of the average citation rate of articles in a given journal. By pointing to

the impact factor as an indicator of the journal's significance, counsel has acknowledged that citation rates are a gauge of a journal's influence. The petitioner did not establish, however, that the citation rates of his own articles are particularly high within his field.

Counsel acknowledged that *Cancer Cell* accepted the article "on August 30, 2011," more than two months after the petition's June 23, 2011 filing date. Therefore, even if the acceptance of this article were evidence of eligibility (which the petitioner has not shown), it would not retroactively show eligibility as of the filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

On October 20, 2011, the director denied the petition. The director acknowledged the petitioner's submission of witness letters and copies of his published work, but found that the record lacked corroboration for witnesses' claims about the significance of the petitioner's findings. The director also acknowledged the petitioner's participation in peer review and professional conferences, but determined that the petitioner had not established that these activities set the petitioner apart from other active professionals in his field. The director also noted that *Cancer Cell* accepted the petitioner's article after the filing date. The director concluded that the petitioner had not shown a level of impact and influence that would warrant the special benefit of the national interest waiver.

On appeal, counsel's "Statement of Facts" includes the assertion that the petitioner "has been recommended without qualification by several of the top cancer researchers in the United States." The record shows that the four witnesses consist of two of the petitioner's collaborators/superiors at VARI; one of [redacted] collaborators; and someone who went to high school with the petitioner. It is not a matter of undisputed or self-evident fact that these individuals also happen to be among "the top cancer research doctors in the United States."

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N

Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In this instance, the witnesses have provided information about the petitioner's activities in the laboratory. The record, however, contains no objective confirmation that the petitioner's work has had more impact or influence than that of others in his field.

Counsel maintains that the petitioner has submitted "overwhelming documentary evidence" of eligibility for the waiver. The documentary evidence shows that the petitioner is a cancer researcher, which, by itself, is not presumptive evidence of eligibility for the waiver. The information about the claimed significance of his work all comes from sources no more than two degrees removed from the petitioner himself, and there is no evidence that the claims of these witnesses represent any sort of broader consensus within the field.

Counsel protests that the director concluded "without any explanation [that] eight citations to [the petitioner's] work was not enough." The petitioner submitted nothing to show that eight citations represent unusually heavy reliance on his work.

Counsel also repeats the assertion that "[h]aving an article selected for publication in [*Cancer Cell*] is the equivalent of being nominated for an *Academy Award* in the entertainment industry. Acknowledgement by *Cancer Cell* is objectively verifiable evidence that [the petitioner] has and will contribute to the national interest to a substantially greater degree than the majority of his peers." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel does not give this unsupported claim greater weight simply by repeating it.

Counsel maintains that, although *Cancer Cell* accepted the petitioner's article after the filing date, "the manuscript itself was written and submitted for publication prior to the filing of this application. . . . The substantive work that went into the research and writing of that manuscript" occurred earlier, and therefore "must be considered." There is some merit to the observation that the petitioner's work took place prior to the filing date, but the record contains no objective evidence that the findings reported in the manuscript are of a caliber that demonstrates eligibility for the waiver. Furthermore, an as-yet-unpublished manuscript generally has had much less of an opportunity to influence others in the field. From time to time, particularly significant works may garner significant attention prior to publication, but the petitioner has not shown such to be the case here. USCIS cannot properly approve a national interest waiver on the basis of unpublished work, relying solely on the assurance that the work, once published, will eventually have a significant impact on the petitioner's field.

With respect to the petitioner's peer review work, counsel states:

> [T]he Director concluded that [the petitioner] did not establish that his "participation in the peer-review process sets [him] apart from others performing such reviews." That is not the standard. [The petitioner] is not required to distinguish his work from others who are selected to serve in the peer-review process. He is only required to distinguish himself from other minimally qualified U.S. workers. The fact that he was asked by prestigious journals

> to serve as a judge of others work is itself proof that he has distinguished himself in the field from other minimally qualified U.S. workers.

The petitioner has not shown that participation in peer review elevates the petitioner above others in his field. The record contains no objective evidence to show how editors select peer reviewers in the petitioner's specialty. Counsel makes much of the appearance of the word "expert" in the invitation letter, but the wording choice in a communication specifically intended to encourage the petitioner's participation in the peer review process is not strong evidence of his overall standing in the field.

Furthermore, the petitioner does not necessarily qualify for the waiver simply by "distinguish[ing] himself from other minimally qualified U.S. workers." Such a standard would mean that the job offer/labor certification requirement applies only to minimally qualified alien workers, because any alien worker whose qualifications exceeded the minimum would be distinguished from minimally qualified U.S. workers. The standard, as stated in *NYSDOT*, is that the petitioner "must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications." *Id.* at 218.

For the reasons discussed above, the petitioner has not established that a waiver of the statutory job offer requirement would be in the national interest. The AAO will therefore dismiss the appeal. In addition, review of the record reveals another issue of concern, regarding the underlying immigrant classification that the petitioner seeks.

The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In the initial submission, counsel stated that the petitioner seeks classification "as an alien with an advanced degree/exceptional ability." Counsel has thus conflated two parallel but distinct immigrant classifications, member of the professions holding an advanced degree and alien of exceptional ability in the sciences, arts or business.

The director, in the denial notice, disregarded the petitioner's claim of exceptional ability, and concluded that the beneficiary qualifies for classification as a member of the professions holding an advanced degree. The record, however, does not contain sufficient evidence to justify a favorable finding regarding either classification.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) includes the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3) sets forth the evidentiary requirements for the two classifications:

> (i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:
>
> > (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
> >
> > (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.
>
> (ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:
>
> > (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
> >
> > (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
> >
> > (C) A license to practice the profession or certification for a particular profession or occupation;
> >
> > (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
> >
> > (E) Evidence of membership in professional associations; or
> >
> > (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The AAO does not dispute that the petitioner's occupation meets the regulatory definition of a profession at 8 C.F.R. § 204.5(k)(2). The record, however, contains no official academic record showing that the alien has a United States bachelor's degree or advanced degree or a foreign equivalent degree.

The petitioner's initial submission included English-language documents indicating that the University of Malaya awarded the petitioner a Bachelor of Science degree in Biochemistry on October 9, 2001, and a Doctor of Philosophy degree on August 9, 2005. The annotation "Certified Translation" appears on both documents.

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Simply writing "Certified Translation" on an English-language version of an unsubmitted foreign-language document does not meet this requirement. The petitioner has failed, therefore, to show that the "Certified Translation" documents are official academic records.

The petitioner also submitted an English-language academic transcript from the University of Malaya, showing his undergraduate course work from 1998 to 2001. The transcript appears to amount to an official academic record, but he did not submit comparable records of his claimed doctorate. Also, the petitioner did not submit an evaluation showing that his first degree is equivalent to a United States baccalaureate degree, or that his second degree is equivalent to a United States doctorate.

The AAO acknowledges that the petitioner's appointment to a postdoctoral position implies that VARI considers the petitioner to hold a doctorate. Nevertheless, the regulations describe the specific evidence necessary to establish an advanced degree, and evidence of employment in a postdoctoral position does not meet that description.

The petitioner has not submitted an official academic record showing that he holds a foreign degree equivalent to a United States advanced degree, or equivalent to a United States baccalaureate degree followed by five years of progressive experience. Therefore, the petitioner has not met the basic regulatory requirements at 8 C.F.R. § 204.5(k)(3)(i).

The AAO now turns to counsel's claim that the petitioner qualifies for classification as an alien of exceptional ability in the sciences. The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) states that, to show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
>
> (C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

In addition to satisfying at least three of the above standards, the petitioner's evidence must show that the petitioner meets the regulatory definition of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor.

Where the petitioner fails to submit the requisite evidence, the proper conclusion is that the petitioner failed to satisfy the regulatory requirement of three types of evidence. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (a decision pertaining to section 203(b)(1)(A) of the Act but containing legal reasoning pertinent to the classification in the current matter before the AAO). If the petitioner has submitted the requisite evidence, USCIS makes a final merits determination as to whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered." *Id.* at 1121, 1122, *aff'd Rijal v. USCIS*, --- F.3d ----, 2012 WL 2130884 (C.A.9 (Wash.)).

The AAO now turns to the petitioner's evidence relating to the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Counsel has claimed that the petitioner meets four of the criteria:

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

The petitioner meets the plain wording of this regulatory standard, having submitted an official academic record from the University of Malaya. The equivalency of the degree is an issue for the final merits determination, as is the question of how this degree demonstrates a degree of expertise above that ordinarily encountered in the petitioner's field. If a particular academic degree is ordinarily encountered in a given occupation, then to hold such a degree does not demonstrate a degree of expertise significantly above that ordinarily encountered in that occupation.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

Counsel stated that the petitioner meets this standard because he "has been conducting cancer research in different laboratories since 1999." The petitioner, however, did not submit letters from current or former employers establishing that experience. Therefore, the petitioner has not met the plain wording of the regulation.

> *Evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E)

Counsel states that the petitioner "is a member of a relevant professional association: The American Associate [*sic*] for Cancer Research." The plain wording of the regulation refers to "associations," rather than to a single "association" or to "association(s)" which may be singular or plural.

The plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires evidence of membership in professional "associations" in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) are worded in the plural. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS's ability to interpret significance from whether the singular or plural is used in a regulation.[1]

Even more fundamentally, counsel's accompanying exhibit list does not show any evidence of this claimed membership, and the AAO can find no such evidence in the record. The AAO finds, therefore, that the petitioner has not submitted evidence of membership in even one professional association. The petitioner has not satisfied this criterion.

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.* 8 C.F.R. § 204.5(k)(3)(ii)(F)

Award certificates in the record appear to satisfy the plain wording of this criterion.

The AAO also finds that, even under the two-part *Kazarian* test, the petitioner has met only two of the six regulatory standards. Specifically, the petitioner has submitted an official academic record of a degree (8 C.F.R. § 204.5(k)(3)(ii)(A)) and evidence of recognition for achievements or contributions to the industry or field (8 C.F.R. § 204.5(k)(3)(ii)(F)). For reasons already explained, the petitioner's evidence of past employment (8 C.F.R. § 204.5(k)(3)(ii)(B)) and membership in professional associations (8 C.F.R. § 204.5(k)(3)(ii)(E)) is deficient and does not meet the regulatory threshold.

Had the petitioner submitted the required evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated "a degree of expertise significantly above that ordinarily encountered" in his field. 8 C.F.R. § 204.5(k)(2); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence does not demonstrate the required degree of expertise, the AAO need not explain that conclusion in a final merits determination.[2] Rather, the proper conclusion is that the petitioner has

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[1] *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

[2] In any future proceeding, the AAO maintains the jurisdiction, under its established *de novo* authority, to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of*

failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122. For the reasons discussed above, the AAO affirms the director's finding that the petitioner has failed to submit sufficient evidence to establish exceptional ability in the sciences.

The AAO, in this proceeding, has not definitively found that the petitioner cannot qualify for the classification he seeks. The AAO has merely found that the petitioner has not submitted the evidence necessary to support a finding of eligibility for that classification. For this additional reason, USCIS cannot properly approve the petition and the AAO must dismiss the appeal.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

Aurelio, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).